

TENTATIVE RULINGS for CIVIL LAW and MOTION February 18, 2010

Pursuant to Yolo County Local Rules, the following tentative rulings will become the order of the court unless, by 4:00 p.m. on the court day before the hearing, a party requests a hearing and notifies other counsel of the hearing. To request a hearing, you must contact the clerk of the department where the hearing is to be held. Copies of the tentative rulings will be posted at the entrance to the courtroom and on the Yolo Courts Website, at www.yolo.courts.ca.gov. If you are scheduled to appear and there is no tentative ruling in your case, you should appear as scheduled.

Telephone number for the clerk in Department Fifteen: (530) 406-6941

TENTATIVE RULING

Case: **Abrahams v. Taser International, Inc. et al.**

Case No. CV CV 09-333

Hearing Date: **February 18, 2009 Department Fifteen 9:00 a.m.**

Defendant Yolo Community Care Continuum's demurrer to Plaintiffs' Second Amended Complaint is **OVERRULED**. (Code Civ. Proc., § 430.10, subd. (e).) Plaintiffs state facts sufficient to constitute a cause of action for negligence against Defendant.

Defendant's unopposed motion to strike the punitive damage claim is **GRANTED**.

If no hearing is requested, this tentative ruling is effective immediately. No formal order pursuant to California Rules of Court, rule 3.1312 or further notice is required.

TENTATIVE RULING

Case: **Bedell v. Fife**

Case No. CV PM 09-1259

Hearing Date: **February 18, 2010 Department Fifteen 9:00 a.m.**

Plaintiff's motion for leave to file the first amended complaint submitted with the moving papers is **GRANTED**. (Code Civ. Proc., § 473, subd. (a).) Plaintiff shall file his first amended complaint by no later than February 24, 2010.

If no hearing is requested, this tentative ruling is effective immediately. No formal order pursuant to California Rules of Court, rule 3.1312 or further notice is required.

TENTATIVE RULING

Case: **Branner v. The Regents of University of California**

Case No. CV CV 08-2007

Hearing Date: **February 18, 2010 Department Fifteen 9:00 a.m.**

Motion to Amend:

Plaintiff's motion for leave to file the second amended complaint is **GRANTED IN PART**. (Code Civ. Proc., § 473, subd. (a).) The Court previously granted defendants' motion to strike all causes of action, including intentional infliction of emotional distress, asserted against defendant Barbara Horwitz. The matter was appealed and the appeal was dismissed. Accordingly, the ruling on the Anti-SLAPP motion is final and the action as to Barbara Horwitz is dismissed. (Code Civ. Proc., § 425.16; *In re Marriage of Skelley* (1976) 18 Cal.3d 365, 368.) To allow plaintiff to amend the complaint to state a cause of action against Barbara Horwitz would defeat the purpose of the anti-SLAPP motion. (*Simmons v. Allstate Ins. Co.* (2001) 92 Cal.App.4th 1068, 1073.)

The Court however, denied the motion to strike the cause of action for intentional infliction of emotional distress as against defendant The Regents of the University of California ("Regents"). Therefore, that claim is still viable. (*Austin v. Massachusetts Bonding & Ins. Co.* (1961) 56 Cal.2d 596, 599.) The proposed second amended complaint also includes a cause of action against the Regents for violation of due process under 42 U.S.C § 1983. Plaintiff concedes in his reply that he cannot sue the Regents for violation of due process under 42 U.S.C. § 1983.

Accordingly, Plaintiff may file a second amended complaint against the Regents for intentional infliction of emotional distress, only, by **March 5, 2010**.

The Court did not consider Plaintiff's request for leave to file the third amended complaint which included an additional cause of action for common law discrimination since that request was raised in the reply papers. (*Nelson v. Gaunt* (1981) 125 Cal.App.3d 623.)

The Court, on its own motion, **STRIKES** the third amended complaint which was not filed in conformity with the laws of this state. (Code Civ. Proc., §§ 435, subd. (b) & 473.)

Motion for Attorney's Fees:

Defendants' unopposed motion for attorney's fees pursuant to Code of Civil Procedure section 425.16 is **GRANTED** in the amount of \$9,143.00. (Declaration of George Acero ¶ 15.)

Motion for Judgment on the Pleadings:

Defendant's motion for judgment on the pleadings as to the first amended complaint is **DROPPED**.

If no hearing is requested, this tentative ruling is effective immediately. No formal order pursuant to California Rules of Court, rule 3.1312 or further notice is required.

TENTATIVE RULING

Case: **Ochoa v. Diablo Funding Group, Inc. et al.**
Case No. CV CV 09-2398
Hearing Date: **February 18, 2010** **Department Fifteen** **9:00 a.m.**

Defendant JP Morgan Chase Bank, N.A.'s demurrer to plaintiffs' complaint is **SUSTAINED IN PART**. (Code Civ. Proc., § 430.40.)

Defendant's demurrer to plaintiffs' first and second causes of action for fraud is **SUSTAINED WITH LEAVE TO AMEND**. Plaintiffs fail to state facts sufficient to state a cause of action for fraud against Defendant. As to corporate defendants, the complaint must allege (a) the names of the person who made the alleged misrepresentations; (b) their authority to speak for the corporation; (c) what they said or wrote; and (d) when it was said or written. (*Tarmann v. State Farm Mut. Auto. Ins. Co.* (1991) 2 Cal.App.4th 153, 157.)

Defendant's demurrer to the third cause of action for negligence is **SUSTAINED WITH LEAVE TO AMEND**. Plaintiffs do not establish that any of the defendants owed a duty of care to plaintiffs. (*Nymark v. Hart Federal Savings & Loan Assn.* (1991) 231 Cal.App.3d 1089, 1096.)

Defendant's demurrer to the fourth cause of action for unfair business practices is **OVERRULED**. (Bus. & Prof. Code, §§ 17200 *et seq.*; *Gibson v. World Savings and Loan* (2002) 103 Cal.App.4th 1291.)

Plaintiff's objection to Defendant's request for judicial notice is **SUSTAINED**. (*Gould v. Maryland Sound Industries, Inc.* (1995) 31 Cal.App.4th 1137, 1145.)

Defendant's request for judicial notice is **GRANTED**. (Evid. Code, § 452.) The Court takes judicial notice of the existence of the documents but does not take notice of the facts contained therein. (*Gould v. Maryland Sound Industries, Inc.*, *supra*, at 1145.)

If no hearing is requested, this tentative ruling is effective immediately. No formal order pursuant to California Rules of Court, rule 3.1312 or further notice is required.